



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2012–N208]

[FXES11120200000F2–145–FF02ENEH00]

**Final Environmental Impact Statement and Record of Decision on Comal County’s
Regional Habitat Conservation Plan for Comal County, Texas**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, make available the final environmental impact statement (FEIS), draft record of decision (ROD), and final Comal County regional habitat conservation plan (RHCP) under the National Environmental Policy Act of 1969 (NEPA). Our decision is to issue a 30-year incidental take permit to Comal County, Texas, for implementation of the Preferred Alternative (described below), which authorizes incidental take of the endangered golden-cheeked warbler and black-

capped vireo, both of which are listed under the Endangered Species Act of 1973, as amended (ESA). Comal County has agreed to implement avoidance, minimization, and mitigation measures to offset impacts to these species, as described in their RHCP.

DATES: We will issue a ROD and make a final permit decision no sooner than 30 days after publication of this notice. Comments on the final EIS, draft ROD, and RHCP will be accepted until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For where to review documents and submit comments, see **Reviewing Documents and Submitting Comments** in SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or (512) 490-0057.

SUPPLEMENTARY INFORMATION: We announce the availability of the Comal County final Environmental Impact Statement, final regional habitat conservation plan, and draft record of decision, which we developed in compliance with the agency decision-making requirements of the NEPA, as amended (42 U.S.C. 4321 et seq.). All alternatives have been described in detail, evaluated, and analyzed in our August 2013 final EIS and Comal County's RHCP.

Based on our review of the alternatives and their environmental consequences as described in our final EIS, we have selected Alternative B, the proposed RHCP. The proposed action is the issuance to Comal County of a section 10(a)(1)(B) incidental take permit (ITP) (under the ESA (16 U.S.C. 1531 et seq.)), which authorizes incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*; GCWA) and black-capped vireo (*Vireo atricapilla*; BCVI) (collectively, covered species). The term of the permit is 30 years (2013–2043).

Comal County will implement avoidance, minimization, and mitigation measures to offset impacts to Covered Species according to their RHCP. Impacts will be mitigated through the purchase of preserves by Comal County, which would generate credits; purchasing credits from a Service-approved conservation bank; or working with willing landowners or private entities to create preserves, which would generate credits. Each preserve acquisition will be subject to Service approval and will generate mitigation credits based on number of acres, and quality of potential occupied habitat for covered species. All preserves and credits will be approved by the Service and will generate mitigation credits based on, and commensurate with, Service policy and guidelines regarding mitigation (such as, but not limited to, the guidance found in *Establishment, Use, and Operation of Conservation Banks* [68 FR 24753]) in order to ensure that the quality of the mitigation is equal to or greater than the quality of the habitat impacted.

Background

Comal County applied to the Service for an ITP. As part of the permit application, Comal County developed the RHCP to meet the requirements of an ITP. Our issuance of

an ITP and implementation of the RHCP would allow Comal County to take the covered species incidentally, during construction, use, or maintenance of public or private land development projects; construction, maintenance, or improvement of transportation infrastructure; installation or maintenance of utility infrastructure; construction, use, or maintenance of institutional projects or public infrastructure; and management activities (covered activities) within Comal County, Texas (plan area), during the 30-year term of the ITP.

The Secretary of the Interior has delegated to the Service the authority to approve or deny an ITP in accordance with the ESA. To act on Comal County's permit application, we must determine that the RHCP meets the issuance criteria specified in the ESA and in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32. The issuance of an ITP is a Federal action subject to NEPA compliance, including the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508).

On June 3, 2010, we issued a draft EIS and requested public comment on our evaluation of the potential impacts associated with issuance of an ITP for implementation of the RHCP and to evaluate alternatives, along with the draft RHCP (75 FR 31463). We included public comments and responses associated with the draft EIS and draft HCP in an appendix to the final EIS.

Purpose and Need of Permit

The purpose of the section 10(a)(1)(B) permit is to authorize incidental take associated with the covered activities described above. We identified key issues and

relevant factors through public scoping, working with other agencies and groups, and comments from the public. We received a response from one Federal agency, the U.S. Environmental Protection Agency, who had “no objections” to implementation of the Preferred Alternative. Most of the comments received from the public focused on: (1) The process of the RHCP and how it may expedite certain projects (e.g., roads and quarry operations) that impact GCWA habitat, (2) the difficulties and decisions involved with modeling and quantifying GCWA habitat, (3) the potential occurrence of listed invertebrates in the plan area, and (4) the alleged lack of documentation ensuring impacts to the Covered Species will be minimized and mitigated to the maximum extent practicable. One comment letter supported the RHCP as proposed. We believe these comments are addressed and reasonably accommodated in the final documents. No new significant issues arose following publication of the draft documents.

Alternatives

Alternative A (No Action): Under the No Action alternative, Comal County would not request and the Service would not issue an ITP. Instead, development activities in Comal County that would cause take of listed species would require individual authorizations through section 10(a)(1)(B) or section 7 consultation where a Federal nexus (authorized by a Federal agency [e.g., section 404 permit under the Clean Water Act]) exists, on a project-by-project basis over the next 30 years.

Alternative B (Preferred Alternative): Our selected alternative is the proposed RHCP, the preferred alternative, as described in the final EIS, which provides for the issuance of an

ITP to Comal County for incidental take that is anticipated to occur as a result of covered activities. This alternative includes implementation of measures to avoid, minimize, and mitigate for the potential incidental take of federally listed species to the maximum extent practicable. This alternative also provides conservation measures for Covered Species and the mechanism for streamlined compliance with the Act.

Alternative C (Reduced Take RHCP): Compared to Alternative B, this alternative (1) eliminates the BCVI as a Covered Species, (2) reduces the areal extent of covered take for GCWA, and (3) reduces funding for the research and public awareness programs, the endowment, and the preserve system.

Decision

We intend to issue an ITP allowing Comal County to implement the preferred alternative (Alternative B), as it is described in the final EIS. Our decision is based on a thorough review of the alternatives and their environmental consequences. Implementation of this decision entails the issuance of the ITP, including all terms and conditions governing the permit. Implementation of this decision requires adherence to all of the minimization and mitigation measures specified in the RHCP, as well as monitoring and adaptive management measures.

Rationale for Decision

We have selected the preferred alternative (Alternative B) for implementation based on multiple environmental and social factors, including potential impacts and

benefits to covered species and their habitat, the extent and effectiveness of minimization and mitigation measures, and social and economic considerations. We did not choose the No Action Alternative, because a project-by-project approach for complying with the Act would be more time-consuming and less efficient, and would result in piecemeal mitigation for covered species, incapable of providing comprehensive or comparable net benefits with respect to the preferred alternative. We did not choose the Reduced Take Alternative, because we do not believe that the amount of take requested is sufficient for the permit duration.

In order for us to issue an ITP, we must ascertain that the RHCP meets the issuance criteria set forth in 16 U.S.C. 1539(a)(2)(A) and (B). We have made that determination based on the criteria summarized below:

1. **The taking will be incidental.** We find that the take will be incidental to otherwise lawful activities, including the proposed construction, use, or maintenance of public or private land development projects; construction, maintenance, or improvement of transportation infrastructure; installation or maintenance of utility infrastructure; construction, use, or maintenance of institutional projects or public infrastructure; and management activities. The take of individuals of covered species will be primarily due to indirect impacts of habitat destruction and/or alteration.

2. **The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings.** The County has committed to a wide variety of conservation measures, land acquisition, management activities, monitoring, adaptive management, and other strategies designed to avoid and minimize take of the covered species and mitigate for any unavoidable loss. Mitigation will be commensurate with the

actual level of take. Comal County will ensure compliance with the avoidance, minimization, and conservation measures through on-the-ground habitat assessments, making available to the public maps of potential habitat; requiring RHCP participants to abide by the seasonal clearing restrictions to avoid immediate impacts to GCWAs and BCVIs during their breeding seasons; and developing a public education and outreach program to educate landowners and residents about GCWAs, BCVIs, and the RHCP.

3. The applicant will develop an HCP and ensure that adequate funding for the HCP will be provided. Comal County has developed and will implement the RHCP. These obligations include the cost for purchase and management of mitigation lands in perpetuity, enforcement of conservation easements, and monitoring of species populations and habitat. In addition, the County has committed to implement adaptive management measures that: Identify areas of uncertainty and questions that need to be addressed to resolve such uncertainty; identify alternative management strategies and how to determine which experimental strategies to implement; integrate a monitoring program that is able to acquire the necessary information for effective strategy evaluation; and incorporate feedback loops that link implementation and monitoring to the decision-making process that result in appropriate changes in management. The County will fund the cost of implementing the RHCP with application and mitigation fees, County General Maintenance and Operations fund contributions, and County Conservation Investments.

The Service's no surprises assurances, changed circumstances, and unforeseen circumstances are discussed in Chapter 8 of the RHCP. Unforeseen circumstances would be addressed through the Service's close coordination with Comal County in the implementation of the RHCP, and the County has committed to a coordination process to

address such circumstances. Adaptive management, Chapter 6 of the RHCP, will be used to direct changes to conservation, mitigation, or management measures and monitoring when needed. We have, therefore, determined that Comal County's financial commitment and plan, along with their willingness to address changed and unforeseen circumstances in a cooperative fashion, is sufficient to meet this criterion.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of any listed species in the wild. As the Federal action agency considering whether to issue an ITP to Comal County, we have reviewed the proposed action under section 7 of the Act. Our biological opinion, dated August 1, 2013, concluded that issuance of the ITP will not jeopardize the continued existence of the covered species in the wild. No critical habitat has been designated for either of the covered species, and thus none will be affected. The biological opinion also analyzes other listed species within the planning area and concludes that the direct and indirect effect of the issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of other listed species and will not cause adverse modification of any designated critical habitat within the permit area.

5. The applicant agrees to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP. We assisted Comal County in the development of their RHCP. We commented on draft documents, participated in numerous meetings and conference calls, and worked closely with Comal County during every step of plan and document preparation, so that conservation of the covered species would be assured and recovery would not be precluded by the covered activities. The RHCP incorporates our recommendations for minimization and mitigation

of impacts, as well as steps to monitor the effects of the RHCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in conservation measures can be implemented if proposed measures prove ineffective (adaptive management) or impacts exceed estimates (changed circumstances). It is our position that no additional measures are required to implement the intent and purpose of the RHCP to those detailed in the RHCP and its associated ITP.

We have determined that the preferred alternative best balances the protection and management of habitat for covered species, while allowing and providing a streamlined process for compliance with the Act for the covered activities. Considerations used in this decision include whether: (1) mitigation will benefit the covered species, (2) mitigation lands will be managed for the species in perpetuity, (3) other conservation measures will protect and enhance habitat, (4) mitigation measures for the covered species will fully offset anticipated impacts to the species and provide recovery opportunities, and (5) the RHCP is consistent with the covered species' recovery plans.

Section 9 of the Act and its implementing regulations prohibit the "taking" of threatened or endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not the purpose of, otherwise lawful activities.

Reviewing Documents and Submitting Comments

Please refer to TE-223267-0 when requesting documents or submitting comments. You may obtain copies of the final EIS and final HCP by going to

<http://www.fws.gov/southwest/es/AustinTexas/>. Alternatively, you may obtain CD-ROMs with electronic copies of these documents, as well as the draft ROD, by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; calling (512) 490–0057; or faxing (512) 490–0974. A limited number of printed copies of the final EIS and final HCP are also available, by request, from Mr. Zerrenner. The application, final RHCIP, final EIS, and draft ROD will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4:30 p.m.) at the Austin Office. During the public comment period (see DATES), submit your written comments or data to the Field Supervisor at the Austin address.

Public comments submitted are available for public review at the Austin address listed above. This generally means that any personal information you provide us will be available to anyone reviewing public comments (see the **Public Availability of Comments** section below for more information).

A limited number of printed copies of the final EIS and final HCP are also available for public inspection and review at the following locations by appointment only:

- Department of the Interior, Natural Resources Library, 1849 C. St., NW., Washington, DC 20240, (202) 208-5814.
- U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 6034, Albuquerque, NM 87102, (505) 248-6920.
- U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758, (512) 490-00574.

Persons wishing to review the application or draft ROD may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Date: November 22, 2013

Benjamin N. Tuggle,
Regional Director, Southwest Region,
Albuquerque, New Mexico.

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